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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,505	04/01/2004	Richard Kunkel	42526-3700	8620

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,505

Applicant(s)

KUNKEL, RICHARD

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The drawings are objected to because reference numerals "14" and "16" (par. 0018 ln. 2) are missing, reference numeral "30" (par. 0018 ln. 3) is missing, reference numerals "24, 26" (par. 0018 ln. 4 and par. 0024 ln. 2) are missing, and reference numerals "14" and "18" (par. 0024 ln. 4) are missing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities: Paragraph 0016, line 5 and paragraph 0018, line 2, "17" denotes different elements; and paragraph 0018, line 2 and paragraph 0024, line 4, "16" and "18" denote the same element.

Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "attached to the bottom" subject matter set forth in claim 1 and "permanently fastened" subject matter set forth in claim 10 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

4. The amendment filed July 05, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure

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is as follows: Paragraph 0019, line 3, where the term "glued" is injected.

Applicant is required to cancel the new matter in the reply to this Office Action.

5. Claim 1, and any claims dependent therefrom, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether the "container" is intended to be part of the claimed combination since structure of the "waterfall" is defined as being connected thereto (ln. 3), but no positive structural antecedent basis therefor has been defined. Stated differently, is the container part of the structure intended to be protected by the claim(s), or merely intended use environment.

Applicant did not substantively address this rejection in the response filed July 05, 2006.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and Koren et al. '342.

The Ruthenberg reference (Fig. 5) discloses a waterfall comprising: a spout 15; a container having a rim (col. 1 lns. 7-10); and a plenum chamber 20-26 including an inlet 17 and a baffle 29. Re claim 3, the choice of flow areas would appear obvious choices to be made in order to optimize performance. Therefore, Ruthenberg teaches all claimed elements except for the provision of a light source.

Although the spout of the Ruthenberg waterfall does not include a light source, as claimed, attention is directed to the Koren et al. '342 ('342) reference which discloses an analogous waterfall which further includes a spout 22 having a light source 12. Therefore, in consideration of '342, it would have been obvious to one of ordinary skill in the waterfall art to

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associate a light source with the Ruthenberg spout in order to enhance appearance.

Applicant argues at pages 7-8 of the response '342 does not teach injecting light into water flowing out of the spout. The examiner can not agree as the light taught by '342 would be injected into the water in the same sense as with applicant's disclosed invention. Given the illustration in Fig. 2 of '342, it is not understood how light could not be injected "into water flowing out of the spout." It is noted applicant has acknowledged the proper combination of the Ruthenberg and '342 disclosures.

8. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and '342 as applied to claim 1 above, and further in view of Simpson et al.

Although the spout of the Ruthenberg waterfall does not include a bezel, as claimed, attention is directed to the Simpson et al. (Simpson) reference (Figs. 7-9) which discloses an analogous waterfall which further includes a spout 88 having a bezel 90. Therefore, in consideration of Simpson, it would have been obvious to one of ordinary skill in the waterfall art to associate a bezel with the Ruthenberg spout in order to enhance use.

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Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and '342 as applied to claim 1 above, and further in view of Koren et al. '100.

Although the inlet of the Ruthenberg waterfall is not a separate inlet structure, as disclosed, attention is directed to the Koren et al. '100 ('100) reference which discloses an analogous waterfall which further includes an inlet 14 having a separate inlet structure 25. Therefore, in consideration of '100, it would have been obvious to one of ordinary skill in the waterfall art to associate a separate inlet structure with the Ruthenberg inlet in order to facilitate assembly.

Applicant argues at pages 8-9 of the response '100 does not teach a separate inlet structure. The examiner can not agree as the inlet structure 25 taught by '100 is a "separate part" in the same sense as with applicant's disclosed invention. Given the disclosure at lines 14-30 in column 3 of '100, it is not understood how applicant's broad claims could distinguish this structure.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

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11. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
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